IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 4768 OF 2003

Shri Ashok Shivram Nangare ...Applicant.

V/s

Shri Arun Bhatia
and anr. ...Respondent.

Mr. Umesh G. Deshpande for the applicant.
Mr. Mihir Desai for respondent No.1
Mr. A.S. Shitole, APP for the State.

CORAM: V.M.KANADE,J.

DATE: 11th March, 2005

P.C.:

1. Applicant is challenging the issuance of process by the J.M.F.C. No.5 Pune under sections 500, 193 and 199 of the Indian Penal Code by order dated 21/6/2002. Application was made for recalling the issuance of process. However, it was rejected by order dated 20/2/2003. Applicant preferred Criminal Revision Application before the Additional District Judge, Pune. The Revision Application was also dismissed. Applicant in this application has, therefore, challenged the orders passed by both the lower Courts.

2. Brief facts for the purpose of deciding this Criminal Application are that the applicant was working as revenue employee in the office of the Collector, Pune. Respondent No.1 was working as

Divisional Commissioner. A departmental inquiry was initiated against respondent No.1. One of the charges against respondent No.1 was that he had abused his authority by pressurising and forcing his subordinates with threats of dire consequences to pass illegal and irregular orders in favour of his friend Shri K. Maharaja Singh in order to enable him to earn huge profits by selling agricultural land near the City of Pune to the extent of about 43.0 Hectares to the United World College of India in utter and blatant disregard to the provisions of relevant Acts and Rules thereunder. During the course of an inquiry against the respondent No.1, statement of applicant was recorded on 5/5/1999 and, thereafter, again on 6/5/1999. In these two statements the applicant has stated that he had received a phone call from the Divisional Commissioner's Office through one Shri R. Khan who allegedly was conveying message of respondent No.1 to hand over certain documents to shri K. Maharaja Singh. Thereafter, the statement of Shri R. Khan was also recorded during the course of the inquiry. A news item was published in Daily "SAMANA" on 4/6/1999 highlighting these irregularities.

3. Respondent No.1 filed a complaint against the applicant under section 500 for defaming him by making

statement against him during the course of the inquiry and secondly for making false statement and fabricating false evidence.

4. The learned Counsel appearing on behalf of the applicant submitted that even if the complaint is taken on its face value, no offence is made out against the applicant. It is submitted that the applicant was duty bound to make a statement in the preliminary inquiry and that such a statement being made during the course of inquiry, he was protected by the 8th exception to section 499. The learned Counsel further submitted that under section 179 of the Indian Penal Code, the applicant was duty bound to state the truth on any subject as a public servant and refusal on his part to do so would be an offence. He further submitted that sections 191, 192, 193 and 199 of the Code were not attracted as the proceedings were not concluded. The inquiry officer was to pass comments on the truth or otherwise of the statement recorded by the Investigating Officer.

5. The learned Counsel appearing on behalf of the respondent No.1 vehemently opposed the submissions made by the learned Counsel for the applicant. He has submitted a list of compilation of various judgments

in support of his submission that every statement made by a person during the course of any inquiry or trial was not covered under the exception and only such statements which are made bonafide in judicial proceedings or any proceedings before the competent authority are covered by the exception.

6. I have perused the statement made by the applicant before the inquiry officer. Without going into other aspect of the case, it can be seen that in his statement, he has not cast any aspersions or imputations on respondent No.1. The applicant in both of his statements has stated that he had received a call from the Divisional Commissioner's office and one Mr. R. Khan told him to give certain documents to K. Maharaja Singh. According to him, the said Khan told him that he was conveying this message on behalf of the Divisional Commissioner. Thus, in his statement, there is no reference, imputation or insinuation against respondent No.1. He has merely deposed what has transpired on that particular day when he had received a phone call from R. Khan. In my view, on the reading of the said statement made by the application, no case is made out against the applicant under section 500 or under sections 191, 192, 193 and 199 of the Indian Penal Code. Even if the averments

made in the complaint are taken on their face value, no case is made out against the present applicant. The another fact which needs to be observed is that respondent No.1 did not file a case of defamation against the Daily "SAMANA" or its Editor after the news paper item had appeared in the press and yet chooses to file this application against the clerk working in the Divisional Commissioner's Office. Applicant is duty bound to make a statement in a departmental inquiry which was initiated against him. In view of this, the submission made by the learned Counsel for the applicant will have to be accepted.

7. Accordingly, the complaint filed by respondent No.1 and the process issued on the said complaint is quashed and set aside. Criminal Application is allowed in terms of prayer clause (a).

V.M. KANADE, J.